IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal Appeal No. 155 of 2007

Date of Decision: 14th November, 2007

Gurcharan Singh		Appellant
	Versus	
State of H.P.		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr. Ramakant Sharma, Advocate.

For the respondent: Mr. Ashok Chaudhary, Addl. Advocate General.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 10th May, 2007 passed by Special Judge (Addl. Sessions Judge, Solan), camp at Nalagarh, H.P. in Sessions Trial No. 2-NL/7 of 2006, titled as State of H.P. vs. Gurcharan Singh, convicting the accused of an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act).

As per the case of prosecution based on a secret information that the accused was indulging in an illicit trade of poppy husk on 23.2.2005, a raiding party was formed and the house of the accused was searched where 30 Kgs. of poppy husk was found. Five samples of 200 gms. each were drawn separately and five separate

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

parcels were prepared, which were sealed and seal impression was affixed. The gunny bags containing the remaining poppy husk were also sealed and seized. Rukka (Ext.PW-7/A) was prepared and forwarded to the police and FIR No. 34 of 2005 dated 23.2.2005 (Ext.PW-7/E) under Section 15 of the Act was registered at Police Station, Nalagarh. The sealed samples were sent for Chemical Analysis and with the completion of investigation, challan was filed in the Court for trial.

The accused was charged for an offence under Section 15 of the Act, to which he did not plead guilty and claimed trial.

In order to prove its case, prosecution examined 12 witnesses and proved on record 20 documents. The trial Court held the accused guilty of the charged offence and sentenced him to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.50,000/- and in default thereof to further undergo imprisonment for a period of one year.

Learned counsel for the appellant has argued that the case is fully covered by the decision rendered by a Division Bench of this Court on 2.11.2007 in Criminal Appeal No. 295 of 2004 (*Rajiv Kumar alias Guglu vs. State of H.P.*) and the conviction has to be set aside in view of the ratio of law laid down by the Court. According to him the report of the Chemical Examiner is similar to the one which was under consideration before the Division Bench. He has, however, not argued the matter on the merits. On a query put to the learned Addl. Advocate General representing the State, it was so clarified by him that the decision rendered by the Division Bench fully covers the case of the appellant. This Court in *Rajiv Kumar* (supra) has held as under:-

"7. For appreciation of the argument of the learned counsel, definitions of "poppy straw" and "opium poppy" given in the Narcotic Drugs and Psychotropic Substances Act, 1985, need to be noticed. The same are reproduced here for ready reference.

> "Section 2(xviii), "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.
>
> Section 2(xvii), "opium poppy" means__
> (a) the plant of the species Papaver somniferum L.; and
> (b) the plant of any other species of Papaver from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act."

8. From the definition of poppy straw, as reproduced hereinabove, it is clear that to understand the meaning of poppy straw, it is essential to refer to the meaning of opium poppy. Poppy straw, when read alongwith the definition of opium poppy, means (a) all parts (except seeds) of the plant of the species of papaver somniferum-L and all parts (except seeds) of the plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may by notification in the official gazette declare to be opium poppy for the purposes of Narcotic Drugs and Psychotropic Substances Act, 1985.

9. In the present case, as is clear from the statement of the Chemical Examiner, recorded by us, the two tests conducted by him to ascertain whether the stuff contained meconic acid and morphine, do not indicate that the stuff examined consisted of the parts of either the plant of the species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government may have notified to be the opium poppy for the purposes of the Narcotic Drugs and Psychotropic Substances Act, 1985. If it is so, the report of the Chemical Examiner, Ex. PW-10/L, that the stuff contains contents of poppy husk, which term is similar to the term "poppy straw", cannot be used as enough evidence to hold that the stuff recovered from the appellant, the sample of which was analyzed by the Chemical Examiner, was poppy straw.

10. In this view of the matter, we derive strength from a judgment of the Hon'ble Supreme Court in Amarsingh Ramjibhai Barot versus State of Gujarat, (2005) 7 Supreme Court Cases 550. Facts of that case were that some black

> substance, looking like opium, was recovered from the accused. A sample of the substance was sent to the Chemical Examiner, who reported that the sample was "opium as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, containing 2.8 per cent anhydride morphine and also pieces of poppy flowers (posedoda)". The Hon'ble Supreme Court noticed the definition of opium as given in Section 2(xv) of the Narcotic Drugs and Psychotropic Substances Act, 1985, according to which, "opium" means (a) the coagulated juice of opium poppy; and (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per cent of morphine. The Hon'ble Supreme Court held that there did not appear any acceptable evidence that the black substance found with the appellant was "coagulated juice of the opium poppy" and "any mixture, with or without any neutral material of the coagulated juice of the opium poppy" and that the opinion given by the FSL that it was opium, as described in the Narcotic Drugs and Psychotropic Substances Act, 1985, was not binding on the Court.
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> 11. In view of what has been stated hereinabove, we hold that the substance allegedly recovered from the appellant has not been proved to be poppy straw, within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985, and, therefore, he is not liable to conviction and punishment for the offence described in and made punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Consequently, the appeal is accepted, judgment of the trial Court convicting and sentencing the appellant for offence under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, is set aside and the appellant is acquitted. He being in jail, serving out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case."

In the present case, the report of the Chemical Examiner is Ext. PW-12. Perusal of the same would show that tests for meconic acid and morphine have been conducted and the same have been found positive. In the para pertaining to general observation, it is stated as under:-

> "I am of the opinion that the three exhibits marked S1, S2 and S3 contain the contents of poppy husk."

On a query put to the learned Addl. Advocate General, he has fairly stated that there is nothing on record to show, either through the statements of witnesses or documentary evidence, that the seized poppy husk on which the tests were conducted consisted of the parts of either the plant of the species of papaver somniferum-L or a plant of any other species of papaver from which opium or any other phenanthrene alkaloid can be extracted and which the Central Government has notified to be the opium poppy for the purposes of the Act. Perusal of the record also suggests the same. Therefore, in the absence of any proof with regard to the same the appellant cannot be said to have committed the charged offence. This view is fully supported by the decision rendered in *Rajiv Kumar (supra)* by a Division Bench of this Court, which is binding upon me. Consequently the appeal is accepted and the judgment of the trial Court convicting and sentencing the appellant for an offence under Section 15(c) of the Act is set aside and the appellant is acquitted. He being in jail, serving out the sentence awarded by the trial Court, is ordered to be set at liberty forthwith, in case his detention is not required in any other case.

14th November, 2007 (Sanjay Karol)
(C) Judge.